
By: **Delegates Kelly, Boschert, Petzold, and Dembrow**
Introduced and read first time: January 16, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety - DNA Testing - Felony Convictions**

3 FOR the purpose of altering provisions of law relating to DNA testing of certain
4 persons convicted of certain crimes by providing that any person convicted of a
5 felony on or before a certain date shall submit a DNA sample to the Department
6 of State Police; providing for the application of this Act; making certain
7 conforming changes; and generally relating to DNA testing.

8 BY repealing and reenacting, with amendments,
9 Article 88B - Department of State Police
10 Section 12A
11 Annotated Code of Maryland
12 (1998 Replacement Volume and 2001 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article 88B - Department of State Police**

16 12A.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) "CODIS" means the Federal Bureau of Investigation's "Combined
19 DNA Index System" that allows the storage and exchange of DNA records submitted
20 by state and local forensic DNA laboratories.

21 (3) "Crime Laboratory" means the Crime Laboratory Division of the
22 Department of State Police.

23 (4) "Director" means the Director of the Crime Laboratory or the
24 Director's designee.

25 (5) "DNA" means deoxyribonucleic acid.

1 (6) "DNA record" means DNA information stored in the statewide DNA
2 data base system of the Department of State Police or CODIS and includes that
3 information commonly referred to as a DNA profile.

4 (7) "DNA sample" means a body fluid or tissue sample provided by any
5 person convicted of a [qualifying crime of violence] FELONY or any body fluid or
6 tissue sample submitted to the statewide DNA data base system for analysis
7 pursuant to a criminal investigation.

8 [(8) "Qualifying crime of violence" means:

9 (i) A violation of Article 27, § 35C of the Code that involves sexual
10 abuse;

11 (ii) Rape in any degree;

12 (iii) A sexual offense in the first, second, or third degree;

13 (iv) Murder;

14 (v) Robbery under Article 27, § 486 or § 487 of the Code;

15 (vi) First degree assault; or

16 (vii) Attempts to commit these offenses.]

17 [(9) (8) "Statewide DNA data base system" means the DNA record
18 system administered by the Department of State Police for identification purposes.

19 [(10) (9) "Statewide DNA repository" means the State repository of DNA
20 samples collected under this section.

21 (b) (1) There is created within the Crime Laboratory a statewide DNA data
22 base system.

23 (2) The system shall be the central repository for all DNA testing
24 information as provided in this section.

25 (3) The Director shall:

26 (i) Administer and manage the system;

27 (ii) Consult with the Secretary on the adoption of appropriate
28 regulations concerning system protocols and operations;

29 (iii) Ensure compatibility with Federal Bureau of Investigation and
30 CODIS requirements, including the use of comparable test procedures, quality
31 assurance, laboratory equipment, and computer software; and

32 (iv) Ensure the security and confidentiality of all records of the
33 system.

1 (4) The Secretary, after consultation with the Director, shall adopt
2 appropriate regulations concerning system protocols and operation.

3 (c) Pursuant to regulations adopted by the Secretary after consultation with
4 the Director under this section, a person convicted of a [qualifying crime of violence]
5 FELONY shall:

6 (1) Have a DNA sample collected upon intake to any prison or detention
7 facility; or

8 (2) If not sentenced to a term of imprisonment, provide a DNA sample as
9 a condition of sentence or probation.

10 (d) A second DNA sample shall be taken if ordered by the court for good cause
11 shown.

12 (e) If a person is not sentenced to a term of imprisonment, failure to provide a
13 DNA sample within 90 days of notice by the Director shall be considered a violation of
14 probation.

15 (f) A person who has been convicted of a [qualifying crime of violence]
16 FELONY prior to October 1, [1999] 2002, and who remains incarcerated on that date
17 shall submit a DNA sample to the Department of State Police.

18 (g) (1) To the extent fiscal resources are available, DNA samples shall be
19 tested for the following purposes:

20 (i) To analyze and type the genetic markers contained in or derived
21 from DNA samples;

22 (ii) In the furtherance of an official investigation into a criminal
23 offense;

24 (iii) To assist in the identification of human remains;

25 (iv) To assist in the identification of missing persons; and

26 (v) For research and administrative purposes, including:

27 1. Development of a population data base after personal
28 identifying information is removed;

29 2. Support of identification research and protocol
30 development of forensic DNA analysis methods; and

31 3. Quality control purposes.

32 (2) (i) Only DNA records that directly relate to the identification of
33 individuals shall be collected and stored.

1 (ii) These records may not be used for any purposes other than
2 those specified in this section.

3 (h) (1) The DNA record of identification characteristics resulting from the
4 DNA testing shall be stored and maintained by the Crime Laboratory in the statewide
5 DNA data base system.

6 (2) The DNA sample shall be stored and maintained by the Crime
7 Laboratory in the statewide DNA repository.

8 (i) Pursuant to regulations adopted by the Secretary, after consultation with
9 the Director:

10 (1) Each DNA sample required to be collected under this section from
11 persons who are incarcerated as of October 1, [1999] 2002, or are sentenced to a term
12 of incarceration after that date shall be collected at the place of incarceration; and

13 (2) DNA samples from persons who are not sentenced to a term of
14 confinement shall be collected at a facility specified by the Director.

15 (j) DNA samples to be submitted for analysis shall be collected by a:

16 (1) Correctional health nurse technician;

17 (2) Physician;

18 (3) Registered nurse;

19 (4) Licensed practical nurse;

20 (5) Laboratory technician; or

21 (6) Phlebotomist.

22 (k) (1) The Secretary, after consultation with the Director, shall adopt
23 regulations governing the procedures to be used for:

24 (i) Collection, submission, identification, analysis, storage, and
25 disposal of DNA samples; and

26 (ii) Access to and dissemination of typing results and personal
27 identification information of samples that are submitted under this section.

28 (2) (i) DNA samples shall be securely stored in the statewide DNA
29 repository.

30 (ii) Typing results shall be securely stored in the statewide DNA
31 data base system.

32 (3) (i) Any procedure adopted by the Director shall include quality
33 assurance guidelines to ensure that DNA identification records meet standards and

1 audit requirements for laboratories that submit DNA records for inclusion in the
2 statewide DNA data base system and CODIS.

3 (ii) The Crime Laboratory and each analyst performing DNA
4 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding
5 180 days, external proficiency testing, including at least one external blind test, by a
6 DNA proficiency testing program that meets the standards issued:

7 1. Under § 1003 of the federal DNA Identification Act of
8 1994; or

9 2. Under the guidelines for a quality assurance program for
10 DNA analysis (known as the "TWGDAM" guidelines).

11 (4) Subject to subsection (o) of this section, records of testing shall be
12 permanently retained on file at the Crime Laboratory.

13 (l) (1) The Crime Laboratory shall:

14 (i) Receive DNA samples for analysis, classification, and storage;

15 (ii) File the DNA record of identification characteristic profiles of
16 DNA samples submitted to the laboratory; and

17 (iii) Make information relating to DNA samples and DNA records
18 available to other agencies and individuals as authorized by this section.

19 (2) The Director may contract with a qualified DNA laboratory that
20 meets the guidelines established by the Director to complete DNA typing analyses.

21 (m) (1) The typing results and personal identification information of the
22 DNA profile of an individual in the statewide DNA data base system may be made
23 available to the following agencies or persons upon written or electronic request after
24 verification by the Director that a match has been made in the population data base
25 and the request is in the furtherance of any of the purposes set forth in subsection (g)
26 of this section:

27 (i) Federal, State, and local law enforcement agencies;

28 (ii) Crime laboratories that serve federal, State, and local law
29 enforcement agencies that have been approved by the Director;

30 (iii) A State's Attorney's office or other prosecutorial office; and

31 (iv) Any person participating in a judicial proceeding in which the
32 data base information may be offered as evidence.

33 (2) (i) The typing results and personal identification information of
34 the DNA profile of an individual in the statewide DNA data base system shall be
35 made available to a defendant or a defendant's counsel on written order of the court in
36 which the case is pending.

1 (ii) A search of the data base shall be conducted to determine the
2 existence of a match to DNA obtained from crime scene evidence taken in relation to
3 the crime for which a defendant is charged if, upon the request of that defendant, a
4 written court order commands the data base search.

5 (iii) Nothing in this section limits a court from ordering any
6 discovery of a DNA record or other related material in a criminal case.

7 (iv) The Director shall maintain a file of all orders issued under this
8 paragraph.

9 (3) The Secretary, after consultation with the Director, shall adopt
10 regulations governing the methods of obtaining information from the statewide DNA
11 data base system and CODIS which shall include procedures for verification of the
12 identity and authority of the individual or agency requesting the information.

13 (4) (i) The Director shall create a population data base comprised of
14 DNA samples obtained under this section.

15 (ii) All personal identifiers shall be removed before the information
16 is entered into the population data base.

17 (iii) Nothing shall prohibit the sharing or disseminating of
18 population data base information with:

- 19 1. Federal, State, or local law enforcement agencies;
- 20 2. Crime laboratories that serve federal, State, and local law
21 enforcement agencies that have been approved by the Director;
- 22 3. A State's Attorney's office; or
- 23 4. Any third party that the Director deems necessary to
24 assist the Crime Laboratory with statistical analyses of the population data base.

25 (iv) The population data base may be made available to and
26 searched by any agency participating in the CODIS system.

27 (n) Any match obtained between an evidence sample and a data base entry
28 may only be used as probable cause to obtain a blood sample from the subject and is
29 not admissible at trial unless confirmed by additional testing.

30 (o) (1) A person whose DNA record or profile has been included in the
31 statewide DNA data base system and whose DNA sample is stored in the statewide
32 DNA repository may request that information be expunged on the grounds that the
33 conviction that resulted in the inclusion of the person's DNA record or profile in the
34 statewide DNA data base system or the inclusion of the person's DNA sample in the
35 statewide DNA repository meets the expungement criteria specified in § 10-105 or §
36 10-106 of the Criminal Procedure Article.

1 (2) Expungement proceedings shall be conducted in accordance with §
2 10-105 or § 10-106 of the Criminal Procedure Article.

3 (3) Upon receipt of an order of expungement, the Director shall purge
4 any DNA record, DNA sample, or other identifiable information covered by the order
5 from the statewide DNA data base system and the statewide DNA repository.

6 (p) (1) A person who, by virtue of employment or official position, has
7 possession of or access to individually identifiable DNA information contained in the
8 statewide DNA data base system or statewide DNA repository and who willfully
9 discloses that information in any manner to any person or agency not entitled to
10 receive that information is guilty of a misdemeanor and on conviction is subject to a
11 fine not exceeding \$1,000 or imprisonment not exceeding 3 years or both.

12 (2) A person who, without authorization, willfully obtains individually
13 identifiable DNA information from the statewide DNA data base system or repository
14 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000
15 or imprisonment not exceeding 3 years or both.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
17 construed to apply retroactively and shall be applied to and interpreted to affect any
18 person convicted of a felony before the effective date of this Act and incarcerated for a
19 felony on or after the effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2002.